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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,333	08/22/2003	James H. Brauker	DEXCOM.011A	8284

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EXAMINER

WINAKUR, ERIC FRANK

ART UNIT PAPER NUMBER

3735

DATE MAILED: 02/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/646,333	BRAUKER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Eric F. Winakur	3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 18 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 124-173 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 169 and 170 is/are allowed.
- 6) ☒ Claim(s) 124-133, 136-146, 158, 162-168 and 171-173 is/are rejected.
- 7) ☒ Claim(s) 134, 135, 147-157 and 159-161 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Claim Rejections - 35 USC § 102***

2. Claims 124 - 133, 136, 138, 142 - 146, 158, 162 - 168, and 171 - 173 are rejected under 35 U.S.C. 102(b) as being anticipated by Colvin, Jr. et al. (USPN 6,330,464 - previously cited by Applicant). Colvin, Jr. teaches an implantable sensor as illustrated in Figures 1 and 3 and described in columns 6 - 9. Applicant's attention is particularly drawn to Figure 3 and the description thereof. With regard to claims 172 and 173, although the claims are drawn to a drug delivery device and cell transplantation device, respectively, none of the claimed elements limit the scope of the claims to such an intended use. As such, the claimed subject matter of claims 172 and 173 is structurally indistinguishable from that of Colvin, Jr.

#### ***Claim Rejections - 35 USC § 103***

3. Claims 137 and 139 - 141 are rejected under 35 U.S.C. 103(a) as being unpatentable over Colvin, Jr. et al. as applied to claim 124 above. Colvin, Jr. teaches an implantable sensor having shapes and dimensions as discussed in column 8, lines 13 - 25. Thus, Colvin, Jr. teaches all of the features of the claimed invention except that the sensor has a plurality of radii of curvature or the particular dimension of the radius of curvature set forth in the claims. It would have been obvious to one of ordinary skill in the art at the time of the invention to implement Colvin, Jr. with the radius of curvature,

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as set forth in the claims, since absent criticality or unexpected results it has generally been held to be within the skill level of the art to modify the shape and size of a device.

***Response to Arguments***

4. Applicant's arguments with respect to claims 124 - 173 have been considered but are moot in view of the new ground(s) of rejection.

***Allowable Subject Matter***

5. The following is a statement of reasons for the indication of allowable subject matter: The prior art does not teach or suggest an implantable sensor having either a 2<sup>nd</sup> surface that is non-adhesive to tissue; a sensing region spaced away from edges of a first major surface by a distance that is at least about 10% of the width of the first major surface; a sensor with a convex surface; or a thermoset substantially encapsulates the body of the sensor outside the sensing region, in combination with the other claimed elements.

6. Claims 134, 135, 147 - 152, 153 - 157, and 159 - 161 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Claims 169 and 170 are allowed.

***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric F. Winakur whose telephone number is 571/272-4736. The examiner can normally be reached on M-Th, 7:30-5; alternate Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571/272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eric F Winakur  
Primary Examiner  
Art Unit 3735

21 February 2006